IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1077 OF 1997

Mrs.Anandibai V. Lonkar
(since deceased by her L. Rs.)

1. Sarang Vasant Lonkar
   age 48 years, occupation business

2. Gangadhar Vasant Lonkar
   age 45 years, occupation nil

3. Dhanottam Vasant Lonkar
   age 50 years, occupation business

   All residing 1286/A,
   Shivajinagar, Pune-411 004.

4. Sulabha Nishikant Thakar
   age 54 years, occupation service,
   residing at Sur Sangat,
   Raghavendranagar, Murarji Peth,
   Solapur-413 001.

5. Kalyani Ashok Pagdi
   age 52 years,occupation service,
   residint at 1, Phulrani,
   Sahitya Sahawas, Bandra,
   Mumbai-400 051. ....Appellants

V/s.

1. The Special Land Acquisition
   Officer, No.17, Pune,
   Bhachat Bhavan, Collector Office
   Compound, Pune - 1.

2. The Municipal Corporation of
   City of Pimpri-Chinchwad, Pune-18.
   (Notice to be served to the
   Commissioner, P.C.M.C., Pune-18.)

3. The State of Maharashtra ....Respondents

Mr.Dhananjay Lonkar for the Appellants.

Mr.K.K. Tated, A.G.P. for Respondent Nos.1 and 3.

Mr.N.V. Walawalkar for Respondent No.2.

CORAM : S. RADHAKRISHNAN &
S.J. VAZIFDAR, JJ.
DATED : 9TH SEPTEMBER, 2004.

ORAL JUDGMENT (PER S. RADHAKRISHNAN, J.) :

1. By this First Appeal, the original Claimant is challenging the judgment and decree dated 16th October, 1996 passed by the learned Extra Joint District Judge, Pune. The brief facts are that the Collector of Pune had notified the acquisition of land admeasuring 1 H. for the purposes of children's play ground in Pimpri - Chinchwad Municipal Corporation and an appropriate notification under Section 6 of the Land Acquisition Act read with Section 126 of the Maharashtra Regional Town Planning Act, 1966 was also published. The possession of the land was also taken on 5th May, 1983. Subsequently on 21st June, 1984, the Special Land Acquisition Officer passed an award for a sum of Rs.5,71,873=65 ps. payable to the deceased Claimant in view of the aforesaid compulsory acquisition.

2. Aggrieved by the said award, the deceased

Claimant had filed a reference under Section 18 of the Land Acquisition Act, 1894 on 31st July, 1984 and an appropriate reference was made to the District Court, Pune. The Extra Joint District Judge, Pune, after recording the evidence of both, the Appellant as well as the Respondents, passed the impugned judgment and decree dated 16th October, 1996, whereby the learned Extra Joint District Judge, Pune had declined to interfere with the award passed by the Special Land Acquisition Officer.

3. The sole issue in the above Appeal is whether the trial Court had erred in accepting the valuation of Rs.85/- per sq.mtr. as adopted by the Special Land Acquisition Officer. The Special Land Acquisition Officer had computed the aforesaid compensation on the basis that the original Claimant was entitled at the rate of Rs.85/- per sq.mtr. It appears that the total area which was acquired was around 10,000 sq.mtr. and for the purposes of road as well as for leaving open space 2500 sq.mtrs. were deducted and the balance area of 7500 sq.mtrs. was taken into account for compensation and computed at the rate of Rs.85/- per sq.mtr. There is no dispute between the parties that the land which has been acquired was an undeveloped plot of land. In view thereof towards the costs of the

development of the plot, an amount of Rs.1,55,786/- was also deducted from the compensation payable towards the costs.

4. As aforesaid the main challenge of the Appellants is that the land which has been acquired ought to be valued either at Rs.107=60 ps. per sq.mtr. or at Rs.138=79 ps. per sq.mtr. and the award at the rate of Rs.85/- per sq.mtr., as awarded by the Special Land Acquisition Officer and confirmed by the impugned judgment and decree will not be proper and the same is contrary to facts and circumstances.

5. The learned counsel appearing for the Appellants took us through the original award as well as the impugned judgment and decree and very strongly relied on Exhibits 47 and 48 which were pertaining to two sale deeds of properties. Exhibit 47 deals with the sale instance with regard to a plot of land admeasuring 3000 sq.ft. (278.81 sq.mtr.) wherein the rate was computed at Rs.107=60 ps. per sq.mtr. which is situated at plot No.35 of survey No.167/1+2. The learned counsel appearing for the Appellants had also brought to our notice the second instance of sale and strongly relied upon the plot of land admeasuring 335.60 sq. mtr. which is situated at survey

No.167/1+2 being plot No.3, wherein the value was at Rs.138=70 ps. per sq.mtr. The contention of the learned counsel appearing for the Appellants is that these two sale instances ought to have been taken into account by the learned Extra Joint District Judge in the reference and ought not to have been rejected.

6. We have perused the actual plan and lay out pertaining to the land acquired and the above two plots and we find that these two plots being plot Nos.3 and 35 are close and proximate to the main road of Nehru Marg - Bhosari Road, whereas the land which has been acquired is quite far away from the aforesaid two smaller plots which are referred herein above. In fact the entire area wherein the above two plots which are referred to, has been fully developed with a lot of buildings therein. On the contrary, the present plot which is being located totally far away and the entire area adjacent thereto does not appear to be that developed. We have also perused the photographs produced in the trial Court with regard to the location of the plot which has ben acquired and also the aforesaid two plot Nos.3 and 35. They also indicate that the plot Nos.3 and 35 are situated in a more developed area and close to the main road. This aspect has been fully considered by the learned Extra Joint

District Judge in paragraphs 26 to 30 of his judgment and decree and we are in full agreement with the reasonings adopted therein.

7. In this behalf, the learned AGP appearing for Respondent Nos.1 and 3 brought to our notice a judgment of the Supreme Court in **Kasturi and others versus State of Haryana (2003) 1 SCC 354**, wherein the Supreme Court has held that on a broad principle whenever the valuation has to be done with regard to undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots available for residential or commercial purposes. In the above facts and circumstances, we find that the amount of compensation awarded at Rs.85/- per sq. mtr. on undeveloped plot of land which has been acquired which is quite far away from the main road to be fair and just and we do not find anything illegal and perverse in the judgment and decree which is impugned in this First Appeal. The present Appeal is devoid of merits

and the same stands dismissed, however with no order as to costs.

(S. RADHAKRISHNAN, J.)

(S.J. VAZIFDAR, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
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FIRST APPEAL NO.1077 OF 1997

DATE OF DECISION : 9TH SEPTEMBER, 2004.

For Approval and Signature :

HON'BLE MR.JUSTICE S. RADHAKRISHNAN.

HON'BLE MR.JUSTICE S.J. VAZIFDAR.

1. Whether Reporters of Local Papers may be allowed to see the judgement ?
2. To be referred to be Reporter or not ?
3. Whether Their Lordships wish to see the fair copy of the judgement ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judges ?)

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Aurangabad and Goa Offices ?)